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05                   UNITED STATES DISTRICT COURT  
06                   WESTERN DISTRICT OF WASHINGTON  
07                   AT SEATTLE

08 ROBERT BERGEN,                                   ) CASE NO.: C08-1442-RAJ  
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13                   The Court, having reviewed petitioner's petition for a writ of habeas corpus pursuant to  
14 28 U.S.C. § 2254, respondent's motion to dismiss or, in the alternative, to transfer the petition,  
15 the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate  
16 Judge, any objections thereto, and the balance of the record, does hereby find and ORDER:

17                   (1)      The Court adopts the Report and Recommendation.  
18                   (2)      This case is TRANSFERRED to the Ninth Circuit Court of Appeals, in the  
19   interests of justice, pursuant to 28 U.S.C. § 1631 and Circuit Rule 22-3(a).  
20                   Petitioner is advised that this transfer does not of itself constitute compliance with  
21   § 2244(b)(3) and Circuit Rule 22-3. He must still file a motion for leave to  
22   proceed in the Ninth Circuit and make the showing required by § 2244(b)(2).

01           (3) The Clerk is directed to close this case and transfer all original documents to the  
02           Ninth Circuit Court of Appeals. The Clerk is further directed to send a copy of  
03           this Order to petitioner, to counsel for respondent, and to Judge Theiler.

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05           DATED this 19<sup>th</sup> day of March, 2009.  
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The Honorable Richard A. Jones  
United States District Judge